
STATUTORY INSTRUMENTS

1993 No. 567

**NATIONAL HEALTH SERVICE,
ENGLAND AND WALES**

**The National Health Service (Fund-
holding Practices) Regulations 1993**

<i>Made</i>	- - - -	<i>9th March 1993</i>
<i>Laid before Parliament</i>		<i>10th March 1993</i>
<i>Coming into force</i>	- -	<i>1st April 1993</i>

The Secretary of State for Health, as respects England, and the Secretary of State for Wales, as respects Wales, in exercise of powers conferred by section 126(4) and (5) of the National Health Service Act 1977⁽¹⁾ and sections 14(2) and (6), 15(7), 16(1) to (4) and (6) and (7) and 17 of the National Health Service and Community Care Act 1990⁽²⁾ and of all other powers enabling them in that behalf, hereby make the following Regulations:

**PART I
GENERAL**

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the National Health Service (Fund-holding Practices) Regulations 1993 and shall come into force on 1st April 1993.

(2) In these Regulations, unless the context otherwise requires—

“the 1977 Act” means the National Health Service Act 1977;

“the 1990 Act” means the National Health Service and Community Care Act 1990;

“allotted sum” has the same meaning as in section 15 of the 1990 Act;

“application” means an application for recognition as a fund-holding practice;

(1) 1977 c. 49; see section 128(1) as amended by the National Health Service and Community Care Act 1990 (c. 19) (“the 1990 Act”), section 26(1), and (2)(g) and (i) for the definition of “prescribed” and “regulations”. Section 126(4) was amended by, and section 126(5) was inserted by, section 65(2) of the 1990 Act.

(2) 1990 c. 19.

“bank account” includes an account with a building society incorporated under the Building Societies Act 1986(3);

“FHSA” means a Family Health Services Authority;

“Family Health Services Authority” means a body of that name established by the Secretary of State under section 10(1) of the 1977 Act(4);

“former fund-holding practice” means the medical practitioners who were members of a fund-holding practice and who—

- (a) have renounced recognition as a fund-holding practice in accordance with regulation 11; or
- (b) from whom recognition has been removed in accordance with regulations 13 and 14 or 15 and 16,

whichever is appropriate;

“fund-holding account” means a bank account maintained by the members of a fund-holding practice for the purpose of receiving an allotted sum or any part of it;

“health service body” has the same meaning as in section 4 of the 1990 Act;

“notice” means notice in writing;

“practice” means a medical practitioner who, or a group of medical practitioners acting jointly and whether or not practising in partnership which, makes or proposes to make an application and “members of the practice” shall be construed accordingly;

“relevant FHSA” means a relevant Family Health Services Authority as defined in section 15(1B) of the 1977 Act(5).

(3) In these regulations, any reference to a Regional Health Authority is a reference to the relevant Regional Health Authority, construed in accordance with section 14(3) of the 1990 Act.

(4) For the purposes of these Regulations, an application is made when it is received by the person to whom it is required to be made in accordance with regulation 3.

(5) In these Regulations, any reference to a fund-holding practice renouncing recognition is a reference to a fund-holding practice renouncing its status as a recognised fund-holding practice.

(6) In these Regulations, any reference to a Regional Health Authority removing recognition is a reference to that Authority removing recognition from the members of a fund-holding practice.

(7) In these Regulations, any reference to the rights and liabilities of members of a fund-holding practice is a reference to rights and liabilities incurred in connection with the application of an allotted sum and in particular to rights and liabilities under NHS contracts.

(8) In these Regulation any reference to the sending of a document is a reference to the sending of the document in a pre-paid letter addressed, in the case of a medical practitioner, to him at the address given in the medical list in which he is included and, in the case of the Secretary of State or a Regional Health Authority, to them at their principal office.

Application of Regulations in Wales

2.—(1) Subject to paragraph (2) and except in regulation 3(4), in the application of these Regulations to any medical practitioner whose relevant FHSA has a locality in Wales, for any

(3) 1986 c. 53.

(4) Section 10 was substituted by section 5(1) of the Health and Social Security Act 1984 (c. 48) and amended by section 2(3) of the 1990 Act. By virtue of section 2(1)(b) of that Act, references in any enactment to a Family Practitioner Committee fall to be construed as references to a Family Health Services Authority.

(5) Section 15 was amended by the Health Services Act 1980 (c. 53), Schedule 1, paragraphs 35 and 90, and by the Health and Social Security Act 1984 (c. 48), section 5(2) and Schedule 8; subsection (1B) was added by section 12(1) of the 1990 Act.

reference to the Regional Health Authority there shall be substituted a reference to the Secretary of State.

(2) Regulations 6(c) and 7 do not apply in relation to an application which, by virtue of paragraph (1) or regulation 3(4), has been made to the Secretary of State.

(3) Subject to paragraph (4), in the application of these Regulations to any fund- holding practice whose recognition has been granted by the Secretary of State by virtue of paragraph (1), for any reference to the Regional Health Authority there shall be substituted a reference to the Secretary of State.

(4) Regulations 14(4)(c)(i) and (5)(c)(i), 16(c)(i), 17 and 25(5)(c) and (6) do not apply to any fund-holding practice whose recognition has been granted by the Secretary of State.

PART II

RECOGNITION

Application for recognition as a fund-holding practice

3.—(1) An application shall be made in writing on a form approved by the Secretary of State and, subject to paragraphs (4) and (5), shall be sent to the Regional Health Authority.

(2) The application shall be signed by each member of the practice making it.

(3) The practice shall provide, in connection with the application, such information and documents as the Regional Health Authority may reasonably require for the purposes of determining the application.

(4) Where a member of a practice is included in both the medical list of an FHSA whose locality is in England and the medical list of an FHSA whose locality is in Wales, or the members of the practice include a member who is included only in the medical list of an FHSA whose locality is in England and a member who is included only in the medical list of an FHSA whose locality is in Wales, then the application shall be made to—

- (a) the Regional Health Authority if more patients on the lists of the members of the practice reside in England than in Wales;
- (b) the Secretary of State in any other case.

(5) Where at least one of the members of a practice wishing to make an application is included in the medical list of a Health Board, section 14 of the 1977 Act shall operate subject to the modification that at the end of subsection (1) there shall be added the words “except, if at least one of those practitioners is also providing general medical services in accordance with arrangements under section 19 of the National Health Service (Scotland) Act 1978(6), where more patients on the lists of members of the practice reside in Scotland than in England”.

Time of application

4. An application for recognition which is to take effect from 1st April in any year shall be made by 1st April in the preceding year.

Grant of recognition as a fund-holding practice

5.—(1) The Regional Health Authority shall grant recognition as a fund-holding practice if it is satisfied that the conditions specified in Schedule 1 are fulfilled.

(6) 1978 c. 29.

(2) Recognition as a fund-holding practice shall take effect from 1st April following the grant of recognition.

Determination of application

6. The Regional Health Authority shall determine an application and shall—
- (a) send to each member of the practice notice of its decision;
 - (b) include in the notice a statement of the reasons for its decision; and
 - (c) where recognition as a fund-holding practice has been refused, inform each member of the practice of the right to appeal to the Secretary of State against the refusal.

Appeals to the Secretary of State against refusal of recognition

7.—(1) A practice may appeal to the Secretary of State against a decision of a Regional Health Authority to refuse to grant the practice recognition as a fund-holding practice.

(2) Subject to paragraph (4), a notice of appeal shall be signed by all the members of the practice.

(3) Subject to paragraph (4), a notice of appeal shall be sent to the Secretary of State within the period of one month beginning with the date on which notice of the Regional Health Authority's decision was sent to the members of the practice and shall contain a concise statement of the grounds of appeal on which the practice relies.

(4) Where in any case it appears to her just and proper to do so, the Secretary of State may do either or both of the following:

- (a) dispense with the requirement in paragraph (2);
- (b) extend the time limit mentioned in paragraph (3).

(5) The Secretary of State shall send a copy of the notice of appeal to the Regional Health Authority.

(6) The Secretary of State may, if she is of the opinion that the appeal is of such a nature that it can properly be determined without an oral hearing, determine the appeal without an oral hearing.

(7) If the Secretary of State is of the opinion that an oral hearing is required, she shall appoint one or more persons to hear the appeal and shall send to each member of the practice and the Regional Health Authority a notice of the date of the hearing and the time and place at which it is to be held.

(8) All members of the practice may attend the hearing and the practice may be represented by a member of the practice or some other person appointed for the purpose by the practice and the Regional Health Authority may be represented by a member or officer of the Authority or some other person appointed for the purpose by the Authority.

(9) The person or persons hearing the appeal shall report to the Secretary of State in writing and the report shall contain such findings of fact as the person or persons hearing the appeal consider necessary for the purpose of enabling the Secretary of State to determine the appeal, and their conclusions.

(10) The Secretary of State, on receipt of the report, shall—

- (a) take the report into consideration; and
- (b) determine the appeal.

(11) Where the Secretary of State has determined an appeal in accordance with this regulation, she shall—

- (a) send to each member of the practice making the appeal and to the Regional Health Authority a notice of his decision; and
- (b) include in the notice a statement of the reasons for her decision.

Conditions for continuing recognition

8. The members of a fund-holding practice shall continue to be entitled to recognition as a fund-holding practice so long as the conditions specified in Schedule 2 are fulfilled in relation to that practice.

Additions to existing fund-holding practices

9.—(1) Subject to paragraph (2), where a medical practitioner (whether or not he is a member of another fund-holding practice) wishes to become a member of an existing fund-holding practice—

- (a) he and the members of the existing fund-holding practice shall apply to the Regional Health Authority for recognition as a fund-holding practice in accordance with regulation 3; but
- (b) regulations 4 and 5(2) shall not apply in the case of that application.

(2) Where a medical practitioner becomes a partner of a member of a fund-holding practice as a result of the grant of an application made by the medical practitioner to an FHSA under regulation 5 of the National Health Service (General Medical Services) Regulations 1992(7)(application for inclusion in the medical list or to succeed to a vacancy), he shall, on giving notice in writing to that effect to the Regional Health Authority, be a member of that fund-holding practice notwithstanding that he did not join in the making of an application under regulation 3.

Withdrawal or death of a member of a fund-holding practice

10.—(1) Where—

- (a) a member of a fund-holding practice withdraws from the practice or dies; but
- (b) the conditions specified in Schedule 2 continue to be fulfilled in relation to the practice

the recognition as a fund-holding practice of the remaining members of the practice shall not be affected by the withdrawal or death.

(2) A member of a fund-holding practice who is a partner of another member of the practice may not withdraw from the fund-holding practice unless he also ceases to be a partner of that other member.

PART III

RENUNCIATION OF RECOGNITION

Renunciation of recognition

11.—(1) The members of a fund-holding practice may renounce recognition by giving to the Regional Health Authority notice of their intention to renounce recognition with effect from 31st March following the sending of the notice.

(2) The notice referred to in paragraph (1) shall—

- (a) be signed by a majority of the members of the fund-holding practice;
- (b) be sent at least one month before the 31st March following the sending of the notice; and
- (c) be accompanied by a statement containing particulars of—
 - (i) the NHS contracts into which the fund-holding practice has entered;

(7) S.I. 1992/635, to which there are amendments not relevant to these Regulations.

- (ii) the amount standing in the fund-holding account;
- (iii) the amount standing in the fund-holding account which may be applied for the purposes specified in regulation 24 (savings from the allotted sum) and;
- (iv) the liabilities of the members of the fund-holding practice.

Consequences of renunciation of recognition

12.—(1) Subject to paragraphs (2) and (4), the consequences of renunciation are that the members of a fund-holding practice cease, on the 31st March specified in the notice referred to in Regulation 11, to be recognised as a fund-holding practice.

(2) Notwithstanding a renunciation of recognition and subject to paragraph (5), a former fund-holding practice shall continue to fulfil the conditions specified in paragraphs 7, 8, 9, 10 and 11 of Schedule 2 until the Regional Health Authority is satisfied that all the liabilities of the former fund-holding practice have been discharged.

(3) When the Regional Health Authority is satisfied that all liabilities of the fund-holding practice have been discharged it shall send a notice to that effect to each member of the former fund-holding practice.

(4) If, after a notice under paragraph (3) has been sent, part of the allotted sum remains in the fund-holding account, the former fund-holding practice shall—

- (a) continue to maintain the fund-holding account until no amount remains standing in that account;
- (b) apply that sum only for the purposes specified in regulation 24 (savings from the allotted sum); and
- (c) each month send to the Regional Health Authority a statement specifying any withdrawal from the fund-holding account.

(5) If, at any time after the renunciation of recognition has taken effect, the Regional Health Authority is satisfied that—

- (a) no part of the allotted sum remains in the fund-holding account; but
- (b) the liabilities of the former fund-holding practice have not been discharged,

all the rights and liabilities of the former fund-holding practice shall, upon notice being sent to that effect to each member of the former fund-holding practice, transfer to the Regional Health Authority.

PART IV

REMOVAL OF RECOGNITION

Grounds for removal of recognition

13.—(1) Where, by 28th February in any year, the Regional Health Authority has notified the members of a fund-holding practice of the amount of the allotted sum for the financial year beginning on the next 1st April and the members of the practice have not, within the period of one month beginning with the date on which that notice was sent, notified the Regional Health Authority that they are prepared to accept that amount as their allotted sum, the Regional Health Authority may remove recognition from them with effect from that 1st April (whether or not the recognition is one which has taken effect in accordance with regulation 5(2)).

(2) The Regional Health Authority may remove recognition from the members of a fund-holding practice if any one or more of the conditions specified in Schedule 2 is no longer fulfilled in relation to the practice.

Procedure for removal of recognition

14.—(1) Except as provided by regulations 15 and 16, where a Regional Health Authority proposes to remove recognition from the members of a fund-holding practice on the ground specified in regulation 13(2), the Authority shall—

- (a) send to each member of the practice a notice specifying—
 - (i) the reason for the proposal, and
 - (ii) the date, which shall be at least 3 months from the date on which the notice is sent, on which the removal of recognition is proposed to take effect; and
- (b) inform the members of the practice that they may, subject to paragraphs (2) and (3), make representations to the Authority concerning the matter, either orally or in writing.

(2) Where the members of the practice wish to make representations in writing, representations shall be sent to the Regional Health Authority within the period of two months beginning with the date on which the notice referred to in paragraph (1) was sent.

(3) Where the members of the practice wish to make representations orally they shall, within the period of two weeks beginning with the date on which the notice referred to in paragraph (1) was sent, give notice to that effect to the Regional Health Authority and the Authority shall, within the period of six weeks beginning with the date on which the members of the fund-holding practice gave notice under this paragraph, give them an opportunity of appearing before and being heard by the Authority or a committee, sub-committee or officer of the Authority appointed for the purpose.

(4) Where the Regional Health Authority decide, having taken into account any representations made by the members of the fund-holding practice, to remove recognition, the Authority shall—

- (a) send to each member of the fund-holding practice a notice of its decision;
 - (b) include in the notice—
 - (i) a statement of the reasons for the decision, and
 - (ii) the date on which the removal of recognition is to take effect; and
 - (c) inform each member of the practice of—
 - (i) the right to appeal to the Secretary of State against the removal of recognition, and
 - (ii) the consequences of removal of recognition.
- (5) In the circumstances specified in regulation 13(1), the Regional Health Authority shall—
- (a) send to each member of the practice notice of removal of recognition;
 - (b) include in the notice a statement of the reasons for the removal of recognition and that the removal takes effect from the 1st April following the sending of the notice; and
 - (c) inform each member of the practice of—
 - (i) the right to appeal to the Secretary of State against the removal of recognition, and
 - (ii) except where recognition has not taken effect in accordance with regulation 5(2), the consequences of the removal of recognition.

Removal of recognition with immediate effect

15. Where it appears to a Regional Health Authority that it is necessary either—

- (a) in the interests of patients of members of the practice; or

(b) for the purpose of ensuring the proper management of the allotted sum, that recognition should be removed under regulation 13(2) with immediate effect, the Regional Health Authority shall remove recognition with immediate effect.

Procedure for removal of recognition with immediate effect

- 16.** In the circumstances specified in regulation 15, the Regional Health Authority shall—
- (a) send to each member of the practice a notice of removal of recognition;
 - (b) include in the notice a statement of the reasons for the removal of recognition; and
 - (c) inform each member of the practice of—
 - (i) the right to appeal to the Secretary of State against the removal of recognition, and
 - (ii) the consequences of the removal of recognition.

Appeals to the Secretary of State against removal of recognition

17.—(1) The members of a fund-holding practice or, where removal of recognition has taken effect, a former fund-holding practice, may appeal to the Secretary of State against the removal of recognition by the Regional Health Authority.

- (2) Regulation 7(2) to (11) shall apply in relation to an appeal against removal of recognition as if—
- (a) a reference to the members of the practice were a reference to the members of a fund-holding practice or, where removal of recognition has taken effect, a former fund-holding practice; and
 - (b) a reference to a decision to refuse to grant a practice recognition as a fund-holding practice were to a decision to remove recognition as a fund-holding practice.

Consequences of removal

18.—(1) On the day on which removal of recognition takes effect, all the rights and liabilities of a fund-holding practice shall transfer to the Regional Health Authority.

(2) Subject to paragraph (3), on the day on which the removal of recognition takes effect, the fund-holding account shall be treated as having been opened by the Regional Health Authority and that Authority may deal with the allotted sum or any part of it remaining in that account as though it were the fund-holding practice.

(3) Where, on the day on which removal of recognition takes effect, there remains in the fund-holding account any part of the allotted sum which may be applied for the purposes specified in regulation 24 (savings from the allotted sum), the Regional Health Authority shall apply that part of the allotted sum for such of those purposes as the former fund-holding practice may require.

PART V

ALLOTTED SUM—AUTHORISED PURPOSES

Payment for drugs, medicines and listed appliances

19.—(1) The members of a fund-holding practice shall, in respect of each month, pay to the Regional Health Authority out of the allotted sum an amount determined in accordance with the following paragraphs of this regulation as the basic cost of the drugs, medicines and listed appliances supplied pursuant to orders given by or on behalf of members of the practice.

- (2) The amount referred to in paragraph (1) shall, subject to paragraph (6), be—
- (a) the net ingredient cost of the drugs, medicines or listed appliances calculated in accordance with paragraphs (3) and (4); minus
 - (b) an amount representing a percentage of the price of the drugs, medicines or listed appliances, which percentage—
 - (i) the Prescription Pricing Authority, or in Wales the Welsh Health Common Services Authority, in its calculation of the remuneration payable to pharmacists in accordance with Part II of the Drug Tariff, has determined is the total discount value applicable to items dispensed in that month divided by the total net ingredient cost of those items, multiplied by 100, and
 - (ii) has been published by the Secretary of State; plus
 - (c) except in the case of listed appliances supplied with, or in connection with, the supply of oxygen or drugs and medicines supplied in bulk, an amount representing the cost of the container or packaging in which the drug, medicine or listed appliance is supplied, calculated in accordance with paragraph (5).
- (3) The net ingredient cost referred to in paragraph (2)(a) of a drug or medicine shall be—
- (a) where the name of the drug or medicine is listed in a list in the Drug Tariff which specifies a price for a specified quantity of that drug or medicine, the price so specified;
 - (b) where the name of the drug or medicine is not so listed, the manufacturer's list price.
- (4) The net ingredient cost referred to in paragraph (2)(a) of a listed appliance shall be the price of the appliance specified in the Drug Tariff.
- (5) The amount referred to in paragraph (2)(c) shall be 6.5 pence for each listed appliance and each quantity of a drug or medicine.
- (6) Where an amount calculated under paragraph 2(a), (b) or (c) is in any month not an exact number of pounds, any amount of fifty pence or more shall be rounded up to, and any amount less than fifty pence shall be rounded down to, the nearest whole pound.
- (7) In this regulation—
- “the Drug Tariff” means the statement published under regulation 18 of the National Health Services (Pharmaceutical Services) Regulations 1992⁽⁸⁾;
- “listed appliance” means an appliance which is included in a list for the time being approved by the Secretary of State for the purposes of section 41 of the 1977 Act;
- “manufacturer's list price” means the price which the manufacturer of a drug or medicine or his wholesaler or supplier publishes as being the price of that drug or medicine;
- “medicine” includes such chemical reagents as are included in a list for the time being approved by the Secretary of State for the purposes of section 41 of the 1977 Act;
- “Prescription Pricing Authority” means the special health authority now constituted by the Prescription Pricing Authority Constitution Order 1990⁽⁹⁾ pursuant to section 11 of the 1977 Act;
- “Welsh Health Common Services Authority” means the special health authority now constituted by the Welsh Health Common Services Authority Constitution Order 1990⁽¹⁰⁾.

(8) S.I. 1992/662.

(9) S.I. 1990/1718. The Prescription Pricing Authority was originally established by the Prescription Pricing Authority (Establishment and Constitution) Order 1974 (S.I. 1974/9) which was revoked and replaced by S.I. 1978/331 (itself revoked and replaced by S.I. 1990/1718).

(10) S.I. 1990/2647. The Welsh Health Common Services Authority was originally established as the Welsh Health Technical Services Organisation under the Welsh Health Technical Services Organisation (Establishment and Constitution) Order 1973 (S.I. 1973/1624). It was re-established as the Welsh Health Common Services Authority under S.I. 1985/996 (itself revoked and replaced by S.I. 1990/2648).

- (8) For the purposes of this regulation, a drug or medicine is supplied in bulk only when—
- (a) it is ordered by a member of a fund-holding practice for two or more of his patients;
 - (b) those patients reside in a school or institution in which at least twenty persons reside;
 - (c) the name of that school or institution is written on the order; and
 - (d) at least ten of the persons residing in the school or institution are patients of the member of the fund-holding practice who ordered the drug or medicine.

Purchase of goods and services

20.—(1) Subject to paragraphs (3) to (9), the members of a fund-holding practice shall apply the allotted sum so as to secure the purchase of such of the goods and services, other than general medical services, referred to in paragraph (2) as are necessary for the proper treatment of individuals on the lists of patients of the members of the practice and are appropriate in all the circumstances having regard, in particular, to the needs of all those individuals.

(2) The goods and services referred to in paragraph (1) are the goods and services specified in a list approved from time to time by the Secretary of State for the purposes of this regulation.

(3) Where the list mentioned in paragraph (2) includes district nursing or health visiting services or both, the members of a fund-holding practice shall enter into at least one NHS contract, to which the Regional Health Authority has consented in accordance with paragraph (4), for the purchase of such of those services as are included in that list.

(4) The Regional Health Authority shall consent to such an NHS contract as is referred to in paragraph (3) if it is satisfied that—

- (a) the proposed provider is either a health authority, within the meaning of the 1977 Act, or an NHS Trust;
- (b) the proposed provider either has itself provided, or has assumed responsibility for the relevant establishments or facilities of a body which provided, such district nursing or health visiting services or both, whether under an NHS contract or not and whether to the patients of the members of the fund-holding practice or not, for the whole of the calendar year ending on the date from which the proposed services are to be purchased; and
- (c) the volume of district nursing and health visiting services which the members of the practice propose to purchase is at least that which the Regional Health Authority, in its determination of the allotted sum payable to the members of the fund-holding practice in accordance with section 15(1) of the 1990 Act⁽¹¹⁾, determined was expected to be purchased for the benefit of individuals on the lists of patients of members of the fund-holding practice.

(5) The members of a fund-holding practice shall not purchase any of the goods or services specified in a list approved under paragraph (2) for an individual who is on the list of patients of a member of the practice from any provider with which any member of the practice is connected unless—

- (a) the Regional Health Authority has consented in writing to the purchase of those goods or services from that provider; or
- (b) it is impracticable, having regard to the condition of the patient, to obtain the consent and no alternative provider is available; or
- (c) the provider is a health service body other than a fund-holding practice.

(6) The Regional Health Authority shall not consent to the purchase of any goods or services from a provider with which a member of the practice is connected unless it is satisfied that no member

⁽¹¹⁾ Section 15(1) was modified by S.I. 1991/582.

of the practice will receive any payment from the allotted sum, whether directly or indirectly, which is wholly or mainly attributable to treatment given to individuals who are on the lists of patients of members of the practice, otherwise than in accordance with regulation 23.

(7) Where the members of a practice have obtained the consent of the Regional Health Authority under paragraph (4) or (5), the members of the practice shall give notice to that Authority—

- (a) in the case of consent under paragraph (4), where they propose any reduction in the level of the services in respect of which the consent was given; and
- (b) in the case of consent under paragraph (5), of any change either in the facilities available at, or the charges made by, the provider in respect of which the consent was given.

(8) Where a Regional Health Authority receives notice as mentioned in paragraph (7), it shall either confirm or withdraw its consent.

(9) For the purposes of this regulation—

- (a) “district nursing services” means services provided by or under the direction of a nurse who is employed by a health authority or an NHS Trust and who has a qualification in district nursing recorded in the register of qualified nurses, midwives and health visitors prepared and maintained by the Central Council for Nursing, Midwifery and Health Visiting in accordance with section 10 of the Nurses, Midwives and Health Visitors Act 1979⁽¹²⁾;
- (b) “health visiting services” means services provided by or under the direction of a health visitor who is employed by a health authority or an NHS Trust and whose name is included in Part 11 of the register of qualified nurses, midwives and health visitors prepared and maintained by the Central Council for Nursing, Midwifery and Health Visiting in accordance with section 10 of the Nurses, Midwives and Health Visitors Act 1979;
- (c) a member of a fund-holding practice shall be treated as connected with a provider if—
 - (i) he is employed by, or is a close relative of a person who is employed by, the provider,
 - (ii) where the provider is a company, he is a director of the company or a partner of or employed by or a close relative of a person who is a director of the company,
 - (iii) he is in partnership with or is a close relative of a person who is in partnership with the provider,
 - (iv) where the provider is a fund-holding practice, he is a close relative of a member of that practice,
 - (v) where the provider is an individual, he is a close relative of that individual,
 - (vi) he has a beneficial interest in the securities of the provider, or
 - (vii) he provides or has provided any services to that provider;and in this sub-paragraph “close relative” means a husband, wife, brother, sister, father, mother, son or daughter;
- (d) “provider” means any person or body with whom the members of a fund- holding practice contract or propose to contract for the purchase of any of the goods and services specified in the list mentioned in paragraph (2).

Limit on provision of goods and services

21. There shall be a limit of £5,000 on the amount which may be spent out of an allotted sum on the provision of goods and services for any one individual, being a limit above which the cost of

⁽¹²⁾ 1979 c. 36. See the Nurses, Midwives and Health Visitors (Parts of the Register) Order 1983 (S.I. 1983/667), amended by S.I. 1989/104 and S.I. 1989/1456 and the Nurses, Midwives and Health Visitors Rules Approval Order 1983 (S.I. 1983/873) amended by S.I. 1989/1456.

any goods and services for that individual in the financial year in question will fall to be met by the District Health Authority whose primary functions include the provision of goods and services (not necessarily the goods and services in question) to the individual concerned.

Payment of salaries

22.—(1) Subject to paragraphs (2) and (4), the members of a fund-holding practice may apply the allotted sum for the purpose of paying the salaries of those employees or members of the practice who are employed—

- (a) to provide treatment to the patients of the members of the practice; or
- (b) in connection with the management or administration of the practice.

(2) Where an FHSA has, before the date on which the members of a fund-holding practice were granted recognition as a fund-holding practice, reimbursed a member of the practice in respect of a proportion of the salary of an employee of his, then the members of the fund-holding practice may apply the allotted sum for the purpose of paying, in respect of periods after that date, only that proportion of the salary of that employee or of any person employed in place of that employee to perform substantially the same functions.

(3) The members of a fund-holding practice may apply the allotted sum for the purpose of paying fees to persons for providing, on the practice premises, services which are necessary for the proper treatment of individuals who are on the lists of patients of the members of the practice.

(4) The members of a fund-holding practice shall not apply the allotted sum for the purpose of employing or engaging the services of a medical practitioner except for the purposes of providing to individuals who are on the lists of patients of members of the practice such services as are included in the list mentioned in regulation 20(2).

Payments to a member of the fund-holding practice

23.—(1) The members of a fund-holding practice may apply the allotted sum for the purposes of paying a medical practitioner who is a member of the practice but only in accordance with an arrangement made in pursuance of paragraph (2).

(2) Subject to paragraphs (3) and (4), the members of a fund-holding practice may, with the written consent of the Regional Health Authority, enter into an arrangement with a medical practitioner who is a member of the practice for the provision by that medical practitioner of services specified in Schedule 3 to patients who are on the lists of patients of members of the practice.

(3) The Regional Health Authority shall not consent to an arrangement made under paragraph (2) unless it is satisfied that—

- (a) the services to be provided are included in Schedule 3;
- (b) the medical practitioner with whom the arrangement is to be made to provide those services is suitably qualified, competent and experienced;
- (c) the medical practitioner with whom the arrangement is to be made does not propose to spend more than 30 hours in any one month in the provision of those services;
- (d) the facilities, including premises, for the provision of those services pursuant to the arrangement are suitable;
- (e) the payments which it is proposed shall be made in respect of the provision of those services—
 - (i) are reasonable,
 - (ii) represent value for money, and

(iii) are to be made directly to the medical practitioner who provides the services or to the partnership of which he is a member and not to any third party.

(4) Where the members of a practice have obtained the consent of the Regional Health Authority under paragraph (2) they shall give notice to that Authority of any change in the matters specified in paragraph (3) upon which the consent was based.

(5) Where a Regional Health Authority receives notice as mentioned in paragraph (4), it shall either confirm or withdraw its consent.

Savings from the allotted sum

24.—(1) The members of the fund-holding practice may discharge their obligations under regulations 19 and 20 and exercise their powers under regulations 22 and 23 in such a way as to take into account any benefit to individuals on the lists of patients of the members of the practice which, in their opinion, would be derived from making savings to be applied in accordance with the following provisions of this regulation; and regulations 19, 20, 22 and 23 shall be construed accordingly.

(2) Where the accounts for a financial year of members of a fund-holding practice have been audited in accordance with Part III of the Local Government Finance Act 1982⁽¹³⁾, the members of a fund-holding practice may, within the period of four years after the end of that financial year, continue to apply any part of the allotted sum paid to them in respect of that financial year for the purposes specified in regulations 19, 20, 22 and 23 and, in addition, for the benefit of the patients of the practice, for any one or more of the following purposes—

- (a) the purchase of material or equipment which—
 - (i) can be used for the treatment of patients of the members of the practice,
 - (ii) enhances the comfort or convenience of patients of the members of the practice, or
 - (iii) enables the practice to be managed more effectively and efficiently; or
- (b) the purchase of material or equipment relating to health education; or
- (c) the improvement of any premises from which the members of the practice carry on their practice whether by improving the structure of the premises or the purchase of furniture and furnishings for the premises.

Recovery of misapplied sums

25.—(1) Where it appears to a Regional Health Authority that any part of an allotted sum has been applied by the members of a fund-holding practice (or any one or more of them) otherwise than in accordance with regulations 19, 20, 22, 23 and 24, it may seek to recover that amount in accordance with the provisions of this regulation.

(2) A Regional Health Authority shall send to each member of the practice notice informing them of the amount which it is alleged has been misapplied and the nature and circumstances of the alleged misapplication and that they may make representations to the Authority concerning the matter, either orally or in writing.

(3) Where the members of a fund-holding practice wish to make representations in writing, they shall do so within the period of two months beginning with the date on which the notice referred to in paragraph (2) was sent.

(4) Where the members of the practice wish to make representations orally they shall, within the period of 2 weeks beginning with the date on which the notice referred to in paragraph (2) was sent, give notice to that effect to the Regional Health Authority and the Authority shall, within the period of 6 weeks of the date on which the members of the fund-holding practice gave notice under

⁽¹³⁾ 1982 c. 32, as amended by Schedule 4 to the 1990 Act.

this paragraph, give them an opportunity of appearing before and being heard by the Authority or a committee, sub-committee, or officer of the Authority appointed for the purpose.

(5) Where the Regional Health Authority, having taken into account any representations made by the members of the fund-holding practice, is satisfied that any part of an allotted sum has been misapplied as mentioned in paragraph (1), it shall—

- (a) send to each member of the practice a notice of its determination to that effect;
- (b) include in the notice a statement of the reasons for its decision; and
- (c) inform each member of the practice of the right to appeal to the Secretary of State.

(6) The members of a fund-holding practice may appeal to the Secretary of State against the determination of a Regional Health Authority that any part of an allotted sum has been misapplied as mentioned in paragraph (1).

(7) Regulation 7(2) to (11) shall apply in relation to an appeal under paragraph (6) as if—

- (a) a reference to the members of the practice were a reference to the members of the fund-holding practice; and
- (b) a reference to a decision to grant a practice recognition were a reference to a decision that any part of the allotted sum had been misapplied as mentioned in paragraph (1).

(8) An amount equal to that part of the allotted sum which the Regional Health Authority or, on appeal, the Secretary of State has determined had been misapplied as mentioned in paragraph (1) shall be recoverable from the members of the practice (or from any one or more of them) by the Regional Health Authority as a civil debt.

PART VI

MISCELLANEOUS

Transfer of functions in England

26.—(1) The function of a Regional Health Authority under section 15(1)(**14**) of the 1990 Act of being liable to pay a sum to the members of a fund-holding practice shall continue to be the function of an FHSA.

(2) The FHSA which is to exercise the function referred to in paragraph (1) in relation to the members of any existing fund-holding practice shall continue to be the relevant FHSA.

(3) Section 15 of the 1990 Act shall continue to have effect subject to the following modifications—

- (a) in subsection (1), for the words “Regional Health Authority” in both places where they occur, there are substituted the words “Family Health Services Authority”, and after the word “determined” there are inserted the words “by the relevant Regional Health Authority”; and
- (b) in subsection (4)—
 - (i) in paragraph (a), for the words “Regional Health Authority” there are substituted the words “Family Health Services Authority which has a locality in England”,
 - (ii) in paragraph (b), for the words “another Regional Health Authority” there are substituted the words “a Regional Health Authority which is not the relevant Regional Health Authority in respect of the members of the practice”, and

(14) Section 15(1) was modified by S.I. 1991/582. Those modifications are continued in these Regulations.

- (iii) for the words “other Authority” there are substituted the words “Regional Health Authority”.

Transfer of functions in Wales

27.—(1) The function of the Secretary of State under section 15(2)(**15**) of the 1990 Act of being liable to pay a sum to the members of each fund-holding practice whose relevant Family Health Services Authority has a locality in Wales shall continue to be the function of an FHSA.

(2) The FHSA which is to exercise the function referred to in paragraph (1) in relation to the members of any existing fund-holding practice shall continue to be the relevant FHSA.

(3) Section 15 of the 1990 Act shall continue to have effect subject to the following modifications—

(a) in subsection (2)—

- (i) for the words “the Secretary of State” in the first place where they occur there are substituted the words “every Family Health Services Authority which has a locality in Wales”,
- (ii) for the words “whose relevant Family Health Services Authority has a locality in Wales” there are substituted the words “in respect of whom it is the relevant Family Health Services Authority”,
- (iii) after the word “determined” there are inserted the words “by the Secretary of State”, and
- (iv) for the words “the Secretary of State” in the second place where they occur there is substituted the word “he”; and

(b) in subsection (5)—

- (i) for the words “the Secretary of State” in the first place where they occur there are substituted the words “a Family Health Services Authority which has a locality in Wales”,
- (ii) for the words “the Secretary of State” in the second place where they occur there are substituted the words “the Authority making the payment”, and
- (iii) for the words “that Authority” there are substituted the words “that Regional Health Authority”.

Revocations

28. The National Health Service (Fund-holding Practices) (Applications and Recognition) Regulations 1990(**16**), the National Health Service (Fund-holding Practices) (General) Regulations 1991(**17**) and the National Health Service (Fund-holding Practices) (Amendment) Regulations 1992(**18**) are hereby revoked.

9th March 1993

Virginia Bottomley
Secretary of State for Health

(15) Section 15(2) was modified by S.I. [1991/582](#). Those modifications are continued in these Regulations.

(16) S.I. [1990/1753](#).

(17) S.I. [1991/582](#).

(18) S.I. [1992/636](#).

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9th March 1993

David Hunt
Secretary of State for Wales

SCHEDULE 1

Regulation 5(1)

CONDITIONS FOR OBTAINING RECOGNITION AS A FUND-HOLDING PRACTICE

1. On the date on which the application is made there is a total of at least 7,000 patients on the lists of patients of members of the practice or, in the opinion of the Regional Health Authority, it is likely that there will be a total of at least 7,000 patients on those lists on the date on which any recognition would take effect.
2. Where some or all of the members of the practice are practising in partnership, the application is made (whether or not with other persons) by all the members practising in partnership.
3. The practice does not include both—
 - (a) a member who practises in a partnership where the total number of patients on the lists of patients of the medical practitioners in the partnership exceeds 7,000, and
 - (b) a member who practises in another such partnership.
4. The practice is, in the opinion of the Regional Health Authority, capable of managing an allotted sum effectively and efficiently and in particular, it possesses, or has access to, the equipment, such as computers, and expertise necessary to enable it to do so.
5. The members of the practice agree to comply with the conditions for continuing recognition set out in Schedule 2 to these Regulations.
6. Where the members of the practice are not partners in a single partnership, the members of the practice have entered into an agreement, approved by the Regional Health Authority, which provides that any act of a member of the practice with respect to the allotted sum binds the other members of the practice.

SCHEDULE 2

Regulation 8

CONDITIONS FOR CONTINUING RECOGNITION AS A FUND-HOLDING PRACTICE

1. There is a total of at least 7,000 patients on the lists of patients of the members of the practice or, although there is a total of less than 7,000 patients on those lists, in the opinion of the Regional Health Authority, there is likely to be a total of at least 7,000 on those lists by the 1st April following the date on which it came to the notice of the Regional Health Authority that the total number of patients on the lists of members of the practice was less than 7,000.
2. The practice does not include both—
 - (i) a member who practises in a partnership where the total number of patients on the lists of patients of the medical practitioners in the partnership exceeds 7,000, and
 - (ii) a member who practises in another such partnership.
3. Where the members of the practice are not partners in a single partnership there is in force an agreement such as is mentioned in paragraph 6 of Schedule 1.
4. The allotted sum is applied in accordance with regulations 19, 20, 22, 23 and 24.
5. The members of the fund-holding practice are managing the allotted sum effectively and efficiently.
6. Where the members of a fund-holding practice employ a person or purchase any services, they first satisfy themselves that the employee has such qualifications, training and experience as are

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necessary for that employment or, as the case may be, that the provider of the services is suitably competent to provide those services.

7. The members of the fund-holding practice maintain a fund-holding account.

8. The members of the fund-holding practice make payments from the allotted sum or any part of it only through the fund-holding account.

9. No sums are paid into the fund-holding account other than the allotted sum or any part of it.

10. The members of the practice send to the relevant FHSA, before the end of each month, such information relating to the preceding month as the relevant FHSA may reasonably require in relation to the management of the allotted sum and in particular to—

- (i) transactions effected through the fund-holding account,
- (ii) the amount standing in the fund-holding account at the end of the preceding month,
- (iii) whether any such amount includes an amount which may be applied for the purposes specified in regulation 24 (savings from the allotted sum), and
- (iv) the arrangements made for the purchase of the goods and services referred to in regulation 20(2).

11. The annual accounts of a fund-holding practice which are required to be kept under section 98(2B)(c) of the 1977 Act⁽¹⁹⁾ shall be submitted to the relevant FHSA within six weeks of the end of the financial year to which the accounts relate.

12. The members of the practice shall not, except in the circumstances specified in subparagraphs (c), (d), (f) and (h) to (m) of paragraph 38 of Schedule 2 to the National Health Service (General Medical Services) Regulations 1992⁽²⁰⁾ (acceptance of fees), demand or accept from any patient of a member of the practice for whom general medical services are provided a payment (including a payment in kind) in respect of any treatment—

- (i) provided by a member of the practice, or
- (ii) which a member of the practice has arranged to be provided for the patient, whether or not the treatment is to be provided under the 1990 Act or the 1977 Act.

SCHEDULE 3

Regulation 23

SERVICES IN RESPECT OF WHICH A MEMBER OF A FUND-HOLDING PRACTICE MAY RECEIVE PAYMENT

Pathology:

Blood Counts

Tests for liver function and electrolytes

Ophthalmology

Chalazion operation

Operations for obstruction of the nasolacrimal duct

Ear, Nose and Throat

Puncture of maxillary antrum with washout

Pharyngoscopy

⁽¹⁹⁾ Section 98(2B) was inserted by section 20(2)(b) of the 1990 Act.

⁽²⁰⁾ S.I. 1992/635, to which there are amendments not relevant to these Regulations.

Laryngoscopy
General Surgery
Endoscopy (upper gastro-intestinal tract)
Sigmoidoscopy
Ligation of varicose veins (below knee)
Genito-urinary Surgery
Diagnostic flexible cystoscopy
Vasectomy
Gynaecology
Colposcopy
Marsupialisation of Bartholin's cyst
Orthopaedics
Excision of ganglion
Carpal tunnel release
Other
Diagnostic ultrasound (not obstetric)

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations consolidate, with amendments, the National Health Service (Fund- holding Practices) (Applications and Recognition) Regulations 1990 (S.I.1990/1753), the National Health Service (Fund-holding Practices) (General) Regulations 1991 (S.I. 1991/582) and the National Health Service (Fund-holding Practices) (Amendment) Regulations 1992 (S.I. 1992/636).

The regulations contain provisions relating to the recognition and operation of fund- holding practices. A fund-holding practice means a practice of one or more medical practitioners who are providing general medical services in accordance with arrangements under section 29 of the National Health Service Act 1977 and which has been recognised as a fund-holding practice by a Regional Health Authority in accordance with section 14 of the National Health Service and Community Care Act 1990. A fund- holding practice is entitled to be paid an allotted sum in accordance with section 15(1) of the 1990 Act and may use that sum for purposes specified in these regulations.

The regulations include provision about—

- the interpretation of the regulations and their application in Wales (Part 1),
- recognition as a fund-holding practice, including applications for recognition, the conditions for obtaining and continuing recognition, determination of applications and appeals to the Secretary of State against refusal of recognition (Part II),
- renunciation of recognition including the procedure for renunciation and its consequences (Part III),

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- removal of recognition as a fund-holding practice, including the grounds for removal, the procedure for removal, appeals against removal and the consequences of removal (Part IV),
- the purposes for which allotted sums may be applied (Part V),
- the transfer of some of the functions of Regional Health Authorities in England and similar functions of the Secretary of State in Wales to Family Health Services Authorities (Part VI).

The principal differences between these regulations and those they replace are the following:

- regulation 20 contains provision requiring fund-holding practices to use their allotted sums for the purchase of district nursing and health visiting services. The consent of the Regional Health Authority is required to such contracts which have to be with an existing National Health Service provider;
- regulation 22 (payment of salaries) has been amended to make it clear that a fund-holding practice may use its allotted sum to pay the salaries only of those who are employed either to provide treatment to patients of the practice or in connection with the management or administration of the practice. Further, it may not use the allotted sum to pay a doctor for the provision of general medical services;
- regulation 23 contains provision limiting the circumstances in which a fund-holding practice may use its allotted sum to make payments to one of the members of the practice. The written consent of the Regional Health Authority is required to any such arrangement, which may be made only for the provision of those services set out in Schedule 3. These services comprise certain diagnostic and minor surgery services which do not form part of general medical services;
- regulation 24 (savings from the allotted sum) makes clear that in exercising their purchasing decisions, the members of a fund-holding practice may take into account the possible benefit to all their patients of making savings.

The regulations contain new provision for the recovery of misapplied sums including the procedure to be followed by the Regional Health Authority and appeal to the Secretary of State (regulation 25).

These regulations also make a number of amendments which are minor or consequential drafting amendments or procedural in nature.